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Wright v. *Holmes,* 100 Me. 508, 62 Atl. 507, 3 L. R. A. (N. S.) 769; 20 Cyc. 1243. It seems however that gifts *causa mortis* are not favored by the courts, and they will construe transactions of this kind with caution. *Dole* v. *Lincoln,* 31 Me. 422. If there are any indications of fraud the gift will be set aside. *Manikee's Adm'r.* v. *Beard,* 85 Ky. 20, 2 S. W. 545. As to what constitutes sufficient delivery to make a valid gift *causa mortis,* see 2 MICH. L. REV. 413.

INJUNCTION—RESTRAINING BREACH OF STIPULATION IN LEASE.—Plaintiff corporation leased a saloon to the defendant, the latter covenanting not to sell any other beer than that brewed by the plaintiff. Circumstances made it necessary for the defendant to sell other beer if the business was to be profitable and he did so. Plaintiff seeks to enjoin defendant from violating the covenant in the lease. *Held,* that the plaintiff was not entitled to the injunction. *Voight Brewing Co.* v. *Holtz* (Mich. 1912) 134 N. W. 19.

Many courts have granted such injunctions on the ground that there was no adequate remedy at law. *Ferris* v. *Am. Brewing Co.,* 155 Ind. 539; *Schlitz Brewing Co.* v. *Nielsen,* 77 Neb. 868; *Beck* v. *Indianapolis Light & Power Co.,* 36 Ind. App. 600. Others have refused to enjoin the breach, holding that the legal remedy was adequate and that to grant injunction in such cases would be virtually to establish a trust on the property, and would place too great power in the hands of the owner or lessor. *Anheuser-Busch Brewing Ass'n* v. *Rahif,* 213 Ill. 549; *Jas. T. Hair Co.* v. *Huckins,* 56 Fed. 366; *Steinau* v. *Cincinnati Gas Light and Coke Co.,* 48 Ohio St. 324; *Hardy* v. *Allegan Circuit Judge,* 147 Mich. 549. The decision in the principal case is based upon and follows closely the last case cited above, and points the distinction there made between the cases where the stipulation is in favor of the real owner who is attempting to prevent the destruction of his property, and the cases where the complainant is merely losing the profits on the goods sold contrary to the agreement.

INTERSTATE COMMERCE—TAXATION.—Minn. Rev. Laws 1905, chap. 11, provided for a tax upon non-resident express companies, to be based on gross receipts, and to be in lieu of all other taxes on the property of such companies. The State included in the gross receipts the earnings of the defendant company from interstate commerce shipments, when the transportation while in the company's hands was performed wholly within the State. *Held,* that this would not unconstitutionally burden interstate commerce; that it is merely an exercise of the State's power to measure a legitimate property tax by receipts which in part come from interstate commerce, although the latter in itself could not be taxed. *United States Express Co.* v *Minnesota* (1912) 32 Sup. Ct. 211.

It is a well settled rule that State laws may not burden interstate commerce by taxing the conduct of interstate commerce. *Fargo* v. *Michigan,* 121 U. S. 230, 30 L. Ed. 888, 1 Inters. Com. Rep. 51, 7 Sup. Ct. 857; *Western U. Teleg. Co.* v. *Pennsylvania,* 128 U. S. 39, 32 L. ed. 345, 2 Inters. Com. Rep. 241, 9 Sup. Ct. 6; Galveston, *H. & S. A. R. Co.* v. *Texas,* 210 U. S. 217, 52 L. Ed. 1031, 28 Sup. Ct. 638. However there is a distinction taken between an attempt to

tax property beyond the taxing power, and to measure a legitimate tax by income derived, in part at least, from the use of such property. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 55 L. Ed. 389, 31 Sup. Ct. 342. Where the resort to gross receipts is merely a means of ascertaining the business done by the corporation, and thus measuring the tax, it is within the power of the State. *Maine* v. *G. T. R. Co.*, 143 U. S. 217, 35 L. Ed. 994, 3 Inters. Com. Rep. 121, 12 Sup. Ct. 121, 163; *Wisconsin & M. R. R. Co.* v. *Powers*, 191 U. S. 379 48 L. Ed. 229, 24 Sup. Ct. 107. The State must be allowed to tax the property, and to tax it at its actual value as a going concern. On the other hand, the State cannot tax the interstate business. These two necessities hardly admit of an absolute logical reconciliation. Yet the distinction is not without sense. A practical rather than a logical distinction should be sought. *Galveston, H. & S. A. R. Co.* v. *Texas, supra.* In the principal case, the court appears to have adopted this practical criterion, and the rule is laid down that the tax is valid where there has been an exercise in good faith of a legitimate taxing power, even though the measure of that taxation is in part the proceeds of interstate commerce, which could not, in itself, be taxed; provided that there is no attempt to impose real burdens, under the guise of taxation, upon Interstate Commerce as such.

JUDGMENT—RES JUDICATA—WHO BOUND—In an action at law on the relation of a citizen for mandamus to the mayor and council of a city commanding them to remove certain obstructions in the street, *Held,* that a decree in the chancery court, sustaining a demurrer to a bill seeking to have the ordinance vacating the street declared void in a former action brought on the relation of other citizens, was *res judicata* in this suit. *People ex. rel. Chilcoat* v. *Harrison,* (Ill. 1912) 97 N. E. 1092.

Generally where a proceeding is brought in the name of the people on the relation of a citizen all individuals constituting the public are bound. *Xiques* v. *Bujac,* 7 La. Ann 498, *Detroit* v. *Detroit M. & R. Co.* 23 Mich. 173; *Shanahan* v. *City of South Omaha,* 2 Neb. (Unof.) 466; *Dicken* v. *Morgan,* 59 Iowa 157, 13 N. W. 57. One of the interesting features of the principal case was that the present action was brought at law, while the former decree was rendered in chancery. To hold such a decree *res judicata* is generally held good practice. FREEMAN, JUDGMENTS, Ed. 4, § 248, 252; *Sibbald's Case,* 12 Pet. 492; *Evens* v. *Tatem,* 9 Serg & R 252, 11 Am. Dec. 717; *Smith* v. *Kernochen,* 7 How. 198. A number of similar cases have arisen in relation to collection and assessment of taxes where the holdings and reasonings of the courts have been similar to the decision in the present case. *Morgan* v. *Miami County Com'rs,* 27 Kan. 89; *Otis* v. *City of St. Paul,* 94 Minn. 57, 101 N. W. 1066. It is held that a purchaser of real estate not a party to an action to enjoin the treasurer of the city from issuing a deed is not bound by the decree. *Helphrey* v. *Redick,* 21 Neb. 80, 31 N. W. 256. And where lots were sold according to a plot, it was held that the purchaser is not bound as to his rights in the street by a judgment against the city, when he was not a party to the action, *Lindsay* v. *Allen,* 112 Tenn. 637, 82 S. W. 171. But it has been held that a judgment against a city fixing the boundaries of a block is not *res judicata*